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AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 1996 FOR THE INTELLIGENCE ACTIVITIES OF THE UNITED STATES GOVERNMENT AND THE CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM AND FOR OTHER PURPOSES

JUNE 14 (legislative day, JUNE 5), 1995.—Ordered to be printed

Mr. SPECTER, from the Select Committee on Intelligence, submitted the following

REPORT

[To accompany S. 922]

The Select Committee on Intelligence, having considered the original bill (S. 922), which authorizes appropriations for fiscal year 1996 for the intelligence activities and programs of the United States Government and the Central Intelligence Agency Retirement and Disability system, and which accomplishes other purposes, reports favorably thereon and recommends that the bill do pass.

PURPOSE OF THE BILL

This bill would:

(1) Authorize appropriations for fiscal year 1996 for (a) the intelligence activities and programs of the United States Government; (b) the Central Intelligence Agency Retirement and Disability System; and (c) the Community Management of the Director of Central Intelligence;

(2) Authorize the personnel ceilings as of September 30, 1996, for the intelligence activities of the United States and for the Community Management Account of the Director of Central Intelligence;

(3) Authorize the Director of Central Intelligence, with Office of Management and Budget approval, to exceed the personnel ceilings by up to two percent;

(4) Permit the President to delay the imposition of sanctions related to proliferation of weapons of mass destruction when necessary to protect an intelligence source or method or an ongoing criminal investigation;

(5) Provide for forfeiture of the U.S. Government contribution to the Thrift Savings Plan under the Federal Employees Retirement System (FERS), along with interest, if an employee is convicted of national security offenses;

(6) Restore spousal benefits to the spouse of an employee so convicted if the spouse cooperates in the investigation and prosecution;

(7) To allow employees of the excepted services to take an active part in certain local elections;

(8) Amend the Fair Credit Reporting Act to permit the Federal Bureau of Investigation to obtain consumer credit reports necessary to foreign counterintelligence investigations under certain circumstances and subject to appropriate controls on the use of such reports; and

(9) Make certain other changes of technical nature to existing law governing intelligence agencies.

THE CLASSIFIED SUPPLEMENT TO THE COMMITTEE REPORT

The classified nature of the United States intelligence activities prevents the Committee from disclosing details of its budgetary recommendations in this Report.

The Committee has prepared a classified supplement to this Report, which contains (a) the classified annex to this Report and (b) the classified schedule of authorizations which is incorporated by reference in the Act and has the same legal status as a public law. The classified annex to this report explains the full scope and intent of the Committee's actions as set forth in the classified schedule of authorizations. The classified annex has the same status as any Senate Report, and the Committee fully expects the Intelligence Community to comply with the limitations, guidelines, directions, and recommendations contained therein.

This classified supplement to the Committee Report is available for review by any Member of the Senate, subject to the provisions of Senate Resolution 400 of the 94th Congress.

The classified supplement is also made available to affected departments and agencies within the Intelligence Community.

SCOPE OF COMMITTEE REVIEW

As it does annually, the Committee conducted a detailed review of the Administration's budget request for the National Foreign Intelligence Program (NFIP) for fiscal year 1996. The Committee also reviewed the Administration's fiscal year 1996 request for a new intelligence budget category, called the Joint Military Intelligence Program (JMIP). The Committee's review included a series of briefings and hearings with the Director of Central Intelligence (DCI), the Acting Deputy Assistance Secretary of Defense for Intelligence and Security, and other senior officials from the Intelligence Community, numerous staff briefings, review of budget justification materials and numerous written responses provided by the Intelligence Community to specific questions posed by the Committee.

In addition to its annual review of the Administration's budget request, the Committee performs continuing oversight of various intelligence activities and programs, to include the conduct of audits and reviews by the Committee's audit staff. These inquiries

frequency lead to actions initiated by the Committee with respect to the budget of the activity or program concerned.

The Committee also reviewed the Administration's fiscal year 1996 budget request for the Tactical Intelligence and Related Activities (TIARA) program aggregation of the Department of Defense. The Committee's recommendations regarding the programs are provided separately to the Committee on Armed Services for consideration within the context of the Committee's annual review of the National Defense Authorization Act.

FOLLOW-UP TO THE AMES ESPIONAGE CASE

In the wake of last year's controversy surrounding the Ames espionage case, the Intelligence Community leadership pledged renewed dedication of the counterintelligence mission. In the testimony he gave before the Committee at his confirmation hearing in open session, DCI John Deutch stated that counterintelligence was one of the four principal purposes toward which the Intelligence Community should direct its efforts.

The Committee and CIA Inspector General reports on the Ames espionage case published last year identified several serious shortcomings on the part of the Central Intelligence Agency. The Committee held a closed hearing with Intelligence Community officials on January 25, 1995, to review progress made to date in implementing counterintelligence reforms recommended by the aforementioned reports and by DCI Woolsey. The Committee also focused on the adequacy of counterintelligence programs and activities in the context of its review and mark-up of the Administrator's fiscal year 1996 budget request and provides several recommendations to enhance U.S. capabilities in this critical area in the classified annex accompanying this report.

Another issue raised by the Ames case is the apparent failure of the Intelligence Community to weed out poor performers. That Aldrich Ames was not only retained but promoted despite clear problems with alcohol and marginal performance is testament to a personnel process in need of reform. The Committee also has found a culture at CIA which has fostered stagnation at the senior levels of management, particularly within the Directorate of Operations. Senior officers are retained without formal evaluation of their leadership contribution. As a result, mid-grade officers with demonstrated leadership and new ideas are denied advancement. As a result, the Committee has included in this bill a provision requiring the DCI to develop for all civilian employees in the Intelligence Community personnel procedures to provide for mandatory retirement for expiration of time in class and termination based on relative performance, comparable to sections 607 and 608, respectively, of the Foreign Service Act of 1980.

FOCUS ON HIGH-PRIORITY AREAS

Notwithstanding the rhetorical priority placed on critical intelligence topics such as proliferation, terrorism, and counternarcotics, the Committee has identified areas where insufficient funds have been programmed for new capabilities, or where activities are funded in the name of high-priority targets which make little or no contribution to the issue. Therefore, in the classified annex accom-

panying this report, the Committee recommends a number of initiatives to enhance U.S. capabilities in the areas of proliferation, terrorism, and counternarcotics.

CREATION OF A JOINT MILITARY INTELLIGENCE PROGRAM

As noted above, this year the Administration submitted a modification of the existing budgeting structure for intelligence activities and programs, by adding a third budget category—the Joint Military Intelligence Program—to supplement the existing NFIP and TIARA. The Administration acted to resubordinate formerly national (NFIP) and tactical (TIARA) programs under JMIP and created a new management structure to oversee JMIP that includes senior officials of the Intelligence Community and Defense. The JMIP Program Executive is the Deputy Secretary of Defense, who also chairs the new Defense Intelligence Executive Board (DIEB)—a senior management body providing planning, programming, and budget oversight of defense intelligence. JMIP was initially established by Secretary of Defense Memorandum dated May 14, 1994, which was superseded by Department of Defense Directive 5205.0, dated April 7, 1995. The Administration is submitting the first JMIP budget request to the Congress in fiscal year 1996.

The Committee does not yet endorse the decision by the Deputy Secretary of Defense and the Director of Central Intelligence (DCI) to develop a new set of funding criteria for intelligence activities. The Committee understands the Defense Department's requirement to exercise more top-down oversight and control of defense intelligence programs and to create a management forum for evaluating these activities. Additionally, advances in technology have made the former definitions of "national" and "tactical" less meaningful to the budget process. However, the Committee has reservations about whether the Administration proposal for three intelligence programs is the optimal solution. Further, the Committee is not convinced that the presence of the Director of Central Intelligence on the DIEB, or the "joint review" process undertaken by the DCI and Deputy Secretary of Defense, will ensure that both Intelligence Community and Defense Department equities are served in the planning, programming, and management of all intelligence activities and programs. The Committee plans to review the appropriate budgeting structure for intelligence as part of its review of roles and missions of the Intelligence Community later this year.

In addition, the Committee is concerned that the fiscal year 1996 budget request includes many programs that are budgeted in one intelligence program but more appropriately belong in another intelligence program according to the definitions set forth by the Deputy Secretary of Defense and the DCI. A partial listing of such programs is provided by the Committee for illustrative purposes:

Programs belonging in NFIP because they serve multiple departments

COBRA DANE, which this fiscal year is programmed in the Administration's budget request for the Arms Control and Disarmament Agency. The Committee recommends returning funding responsibility for this important arms control monitoring capability to the NFIP;

Air Force's COBRA JUDY, a specialized shipborne reconnaissance program, funded in TIARA.

Navy's P–3C REEF POINT, a specialized airborne reconnaissance program, funded in TIARA.

Programs belonging in JMIP because they serve multiple DoD components

Army's Guardrail and Airborne Reconnaissance Low programs, funded in Tiara;

Air Force's E–8C Joint Surveillance Tracking and Reconnaissance System, funded in Tiara;

Air Force's Space-Based Infrared System, funded in Tiara.

Programs belonging in Tiara because they serve single military departments

Army's European Command Combat Intelligence Readiness Facility, funded in the NFIP;

Navy's Fleet Ocean Surveillance Information Facility in the European Theater, funded in the NFIP.

With the exception of Cobra Dane, the Committee makes no recommendations this fiscal year to transfer any of these programs, primarily to avoid confusion and the potential for an unintended "appropriated-not authorized" situation. Further, the Committee does not necessarily agree that last year's decision by the Administration to consolidate funding for spaceborne and airborne reconnaissance acquisition in the NFIP and JMIP respectively (regardless of the intended customer base) makes sense in light of the new definitions for programming and budgeting intelligence activities and programs.

The Committee believes that the DCI and Deputy Secretary of Defense should review jointly the budget categories of these and other programs prior to the submission of the fiscal year 1997 budget request and make the appropriate adjustments. Further, the DCI and Deputy Secretary of Defense should consider whether "split funding" arrangements (i.e. funding provided by more than one intelligence budget category) are required for those organizations charged with acquisition of intelligence platforms (i.e. the Defense Airborne Reconnaissance Office and the National Reconnaissance Office) on the grounds of improved management efficiency without regard to the consumer base as defined by Executive Order 12333 and Department of Defense Directive 5205.0. The Committee requests that a report assessing these issues and outlining any specific programmatic adjustments made in the President's fiscal year 1997 budget request to more accurately reflect the intent of the new budgeting system be provided to the intelligence and defense committees by March 1, 1996.

COMMITTEE RECOMMENDATIONS ON JMIP

Unlike the activities of the National Foreign Intelligence Program which the Committee also authorizes, many activities funded by the new Joint Military Intelligence Program are unclassified. However, the amount of the total fiscal year 1996 budget request for JMIP, like that for the NFIP, is classified, as is any comprehensive treatment of JMIP program elements. Given these facts, and

in order to provide for the greatest degree of openness possible, the Committee provides in the following sections its unclassified recommendations on JMIP program elements. Further recommendations, as well as classified details on these unclassified recommendations, are provided in the classified annex accompanying this bill.

AIRBORNE RECONNAISSANCE PRIORITIES

The Committee believes that it is vital to maintain a robust airborne reconnaissance force that is capable of collection satisfying priority intelligence requirements in peacetime, crisis, and war. The Committee also understands that, in the current constrained budget environment, choices need to be made between upgrades to current manned systems and the development of new unmanned platforms. Due to the increasing demands and requirements placed on our nation's current generation of manned reconnaissance systems, the Committee makes the following recommendations to redirect resources requested for unmanned aerial vehicle development activities to several manned reconnaissance upgrades which the Committee views as essential in order to provide mission-capable forces to the warfighting Commanders-in-Chief (CINC's).

Accordingly, the Committee recommends changes to the Administration's fiscal year 1996 budget request to terminate one of five unmanned aerial vehicle (UAV) programs currently under development by the Defense Airborne Reconnaissance Program (DARP) and, instead, to reallocate these resources to provide for the upgrade of existing manned reconnaissance platforms.

Conventional high altitude endurance UAV

The Committee recommends termination of the Conventional High Altitude Endurance Unmanned Aerial Vehicle (CONV HAE UAV) development effort, a reduction to the DARP in fiscal year 1996 of $117.0 million. The Committee believes that the CONV HAE UAV will not provide an increased capability over the current U–2 airborne reconnaissance fleet and is therefore not required. The U–2 is an operational system currently supporting warfighting and national intelligence requirements. The CONV HAE UAV is an Advanced Concept Technology Demonstration (ACTD) project and has not achieved first flight.

In fact, the U–2 is a much more capable multi-sensor reconnaissance aircraft today than the CONV HAE UAV is designed to be. The U–2 fleet provides radar, electro-optical, and film imagery as well as electronic intelligence collection support to national, theater, and tactical commanders. The CONV HAE UAV will have only imagery sensors, and these will be less capable than those on-board the U–2. The U–2 has a much greater payload capacity than the CONV HAE UAV design. The U–2 affords a deeper look capability than planned for the CONV HAE UAV. Further the Committee understands that the CONV HAE UAV operational concept, now under development, is virtually identical to that of the U–2.

Cost comparisons are difficult to make because the U–2 is an existing asset flying missions on a daily basis and the CONV HAE UAV is an ACTD and has no flight experience. However, informa-

tion provided to the Committee by the DARP indicates that the flying hour costs of the UAV are comparable to the U–2.

The Committee believes that development by the DARP of the low observable high altitude endurance unmanned aerial vehicle (LO HAE UAV) as a complementary system to the U–2 will provide the most capability to national policymakers and the warfighter. The Committee strongly suggests that the Department investigate increases in capability that can be achieved in the LO HAE UAV if the goal for unit fly-away cost is increased from $10.0 million to $20.0 million. The Committee requests that the DARP prepare an analysis on this alternative and provide it to the intelligence and defense committees by March 1, 1996.

RC–135V/W Rivet Joint engine upgrades

Rivet Joint is an Air Force reconnaissance program which provides all-weather, worldwide signals intelligence collection support to theater commanders. The Committee has become concerned with the high OPTEMPO of the RC–135V/W Rivet Joint reconnaissance fleet. The RC–135 airframes currently are logging an extraordinary number of annual flight hours. Additionally, the schedule frequency and the extended mission times of the Rivet Joint program contribute significantly to the fuel and operating costs of the aircraft. Further, the current engines do not meet State III noise levels or EPA emission standards.

The Committee is aware that the Air Force is considering the establishment of a re-engining program for the RC–135 aircraft. Re-engining with the CFM–56 engines common to the tanker fleet and commercial airlines would increase RC–135 nominal operating altitudes considerably, thereby greatly enhancing sensor field-of-view and area coverage, decreasing fuel consumption, increasing on-station time, and improving short-field capability for contingency operations. Current tanker support requirements and tanker flying could also be reduced significantly.

Therefore, the Committee recommends an authorization of $79.5 million in fiscal year 1996 to begin re-engining the RC–135 fleet. The Committee expects the DARP to budget the additional funds required to continue re-engining in fiscal year 1997 and beyond.

U–2 upgrades

While the Committee is supportive of the DARP initiative to define a Joint Airborne SIGINT Architecture (JASA), there is concern about the affordability of this approach for the Military Departments. The Committee is also concerned with the Defense Department's apparent decision not to continue upgrading current platforms while focusing funding exclusively on a new development program. Therefore, the Committee recommends an authorization of $20.0 million in fiscal year 1996 for the DARP to initiate a sensor upgrade program for the U–2 fleet. Further details about the proposed upgrade are contained in the classified annex accompanying this bill. The Committee expects the DARP to budget for the remaining funds required to complete this upgrade in fiscal year 1997 and beyond. The also Committee believes that this upgrade should be fully compliant with JASA standards.

The Committee also makes a recommendation to improve the defensive capabilities of the U–2 fleet and provides $13.0 million in fiscal year 1996 for this purpose. Details of this initiative are included in the classified annex accompanying this bill. As with the proposed sensor upgrade, the Committee expects the DARP to budget for the remaining funds required to complete this upgrade in fiscal year 1997 and beyond.

DEFENSE INTELLIGENCE COUNTERDRUG ANALYSIS INITIATIVES

In line with the Committee's efforts to enhance intelligence capabilities in the area of counternarcotics and other high-priority issues, the Committee recommends an authorization of an additional $7.0 million in fiscal year 1996 to the Defense Intelligence Counterdrug Program (DICP). These funds should be applied against a variety of high-priority, counterdrug analysis and connectivity programs identified by the DICP Program Manager. Details of this initiative are included in the classified annex accompanying this bill.

INFORMATION SYSTEMS SECURITY

While the Administration's fiscal year 1996 budget request for DoD's Information Systems Security Program provides for a significant increase over the amounts requested in fiscal year 1995, the Committee notes that information security (INFOSEC) personnel and resources will still have declined by roughly 40% since 1987. Meanwhile, in planning for future conflicts, the Department of Defense is deliberately placing increased reliance on information systems to compensate for a reduced force structure.

The Committee does not believe that the Department of Defense has adequately assessed U.S. information security requirements. Further, it does not believe that there is a coherent plan or program to rectify the vulnerabilities identified by the Joint Security Commission, the Commission on Roles and Missions, and independent organizations such as the RAND Corporation. An effective and comprehensive U.S. policy needs to be developed in order to prepare an integrated response that recognizes not only the vulnerabilities of U.S. government communications, but the vulnerabilities of the underlying Public Switch Network (PSN). In that regard, it is not clear what benefits can be achieved through increased DoD spending on information security when over 95% of DoD communications travel over the PSN and the PSN is not protected against attacks that sophisticated adversaries may employ in future conflicts. In sum, a comprehensive U.S. INFOSEC plan urgently needs to be developed.

The Committee therefore requests the DCI and the Secretary of Defense to prepare a comprehensive report which: (a) identifies the key threats to U.S. computers and communications systems, including those of both the government and the private sector (i.e. the Public Switch Network upon which the government heavily depends); and, (b) provides a comprehensive plan for addressing the threats described in section (a), to include any necessary legislative or programmatic recommendations required to protect government or private U.S. information systems. The report shall be provided to the intelligence and defense committees not later than March 1,

1996. In the absence of such a plan, the Committee remains skeptical regarding the benefits that can be achieved through increased funding for the Department of Defense Information Systems Security Program.

COMMERCIAL OFF-THE-SHELF TECHNOLOGY

It is the sense of the Committee that, to the extent practicable, all high performance computing and communications (HPCC) equipment and products purchased with funds authorized in this Act should be Commercial-Off-The-Shelf (COTS) or modified COTS.

The Department of Defense has already adopted a COTS policy in its purchase of high performance computing and communications systems, with significant cost savings to the taxpayers and with excellent performance results. Moreover, the Department's September 1994 Defense Technology Plan, prepared by the Director of Defense Research and Engineering, recommends the utilization of "more commercially viable technologies" in the purchase of high performance computer systems. (pp. 8–7, Computing and Software, Defense Technology Plan.)

The Committee also believes that the application of a COTS technology policy among the intelligence agencies should be adopted and implemented beginning in fiscal year 1996. The Committee is hopeful that a COTS policy for the procurement of high performance computing and communications equipment could save millions of dollars and maintain the quality and performance standards required by the intelligence agencies both now and in the future.

Therefore, the Committee requests the agencies receiving funding authorized in this bill to begin the process of adopting COTS technology procurement procedures in their high performance computing and communications programs and to report, through the DCI, to the Intelligence and Defense Committees not later than May 1, 1996, regarding compliance with this request.

TECHNOLOGIES TO IMPROVE SOUND PROCESSING DEVICES USED BY THE PROFOUNDLY DEAF

Recent technological advances have made it possible for the medical community to provide substantial hearing to profoundly deaf individuals who cannot benefit from conventional hearing aids. Surgically implanted electrodes, combined with external speech processing devices, have the demonstrated ability to provide sound information across the frequency range even at low volume (i.e. 30 decibels). Some children and adults, who would have had no option other than to use sign language, now have access to spoken language and can function in school and the workplace without any use of sign language. While the benefits can be enormous, it is also true that the quality of sound provided by cochlear implants is still crude compared to normal hearing. Remarkable progress has been made, but many technical issues remain, including the reliability, size, and the effectiveness of the hardware and software used by manufacturers of sound processing devices.

The Intelligence Community, and the National Security Agency in particular, is a world leader in speech and signal processing. It is quite possible that some of the sophisticated technologies employed by the Intelligence Community could increase the signal-to-

noise ratio in the sound processing devices used by the profoundly deaf. The Committee has recently seen how imaging technology developed by the Intelligence Community can be adapted to cancer screening by the medical community, and it is the Committee's hope that similar success can be achieved in this area. The Committee therefore requests the Intelligence Community to contact U.S. manufacturers of cochlear implant devices, review their technical needs, and identify any technologies that might be shared with such manufacturers in order to improve the quality of hearing for the hearing impaired. The Committee requests a report outlining the results of the Intelligence Community's review, to include identification of any capabilities that should be shared with U.S. manufacturers of cochlear implants, not later than May 1, 1996.

INTELLIGENCE AUTHORIZATION ACT FISCAL YEAR 1996 SECTION-BY-SECTION ANALYSIS AND EXPLANATION

Title I—Intelligence activities

Section 101 lists the departments, agencies, and other elements of the United States Government for whose intelligence activities and programs the Act authorizes appropriations for fiscal year 1996.

Section 102 makes clear that the details of the amounts authorized to be appropriated for intelligence activities and programs and personnel ceilings covered under this title for fiscal year 1996 are contained in a classified Schedule of Authorizations. The Schedule of Authorizations is incorporated into the Act by this section.

Section 103 authorizes the Director of Central Intelligence, with the approval of the Director of the Office of Management and Budget, in fiscal year 1996, to expand the personnel ceilings applicable to the components of the Intelligence Community under section 102 by an amount not to exceed two percent of the total of the ceilings applicable under section 102. The Director may exercise this authority only when necessary to the performance of important intelligence functions and any exercise of this authority must be reported to the two intelligence committees of the U.S. Congress.

Section 104 provides details concerning the number and composition of the Intelligence Community Management Account of the Director of Central Intelligence.

Subsection (a) authorizes appropriations in the amount of $93,283,000 for fiscal year 1996 for the staffing and administration of the various components under the Community Management Account of the Director of Central Intelligence. It also authorizes funds identified for the Advanced Research and Development Committee and the Environmental Task Force to remain available for two years.

Subsection (b) authorizes 247 full-time personnel for the components under the Community Management Staff for fiscal year 1996 and provides that such personnel may be permanent employees of the Staff or detailed from various elements of the United States Government.

Subsection (c) requires that personnel be detailed on a reimbursable basis except for temporary situations.

Title II—Central Intelligence Agency retirement and disability system and related provisions

Authorization of Appropriations

Section 201 authorizes appropriations in the amount of $213,900,000 for fiscal year 1996 for the Central Intelligence Agency Retirement and Disability Fund.

Title III—General provisions

Section 301 provides that appropriations authorized by the conference report for salary, pay, retirement, and other benefits for federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

Section 302 provides that the authorization of appropriations by the conference report shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

Section 303 permits the President to delay the imposition of sanctions or related actions when necessary to protect against the compromise of an intelligence source or method or an ongoing criminal investigation. Delays can be important when the life or safety of a cooperating intelligence source is at stake. Use of the term "compromise" in the section is intended to encompass actions that would result in disruption or cessation of a criminal investigation or the loss or rendering ineffectual of an intelligence source or method.

The section provides the President must promptly report the rationale and circumstances that led to the delay, with respect to intelligence sources or methods, to the Senate and House intelligence oversight committees. The President must include in that report a description of the efforts being made to address the circumstances that led to the delay and an estimate of the date by which the delay will be lifted. A delay under this section cannot be indefinite in duration.

The Committee recognizes that intelligence collection on proliferation targets and law enforcement investigations are critical components of the nation's nonproliferation efforts. In some circumstances, the imposition of sanctions could inhibit the full flow of information about weapons proliferation that might otherwise be acquired, or hinder a law enforcement initiative. The net result may be to undermine rather than enhance our nonproliferation objectives. This section is intended to be limited to proliferation sanctions, including those in the chemical and biological warfare, missile, and nuclear contexts.

A delay under this section is not intended to protect generic or speculative intelligence interests. A delay would be appropriate to protect a sensitive intelligence source or method, for example, where:

> the Intelligence Community is actively collecting important foreign intelligence and imposition of sanctions will result in serious harm to a source or the loss of the source of collection; or

the Intelligence Community is engaged in an operational activity that would be seriously hampered by the imposition of sanctions.

Section 304 adds a new subsection to section 8432(g) of title 5, United States Code, to provide that the Government's contribution to the Thrift Savings Plan under the Federal Employees Retirement System (FERS) and interest earned on that contribution shall be forfeited if the employee's annuity has been forfeited under subchapter II of Chapter 83, title 5, United States Code. This provision closes a loophole that was created when the FERS was established.

Prior to the enactment of the FERS, an employee's retirement annuity was based entirely on contributions made by the employee and by the United States Government to the applicable retirement fund. Under subchapter II of Chapter 83, any employee convicted of various national security offenses, including espionage, would forfeit his annuity and be entitled to receive only this monetary contributions to the annuity. A new retirement benefit, however, was created with the establishment of FERS, payable under the Thrift Savings Plan.

The Thrift Savings Plan now permits the employee to contribute a salary percentage into the Government-managed fund and requires that the Government also contribute to the fund on the employee's behalf. An oversight in enacting the FERS was that the forfeiture provisions of subchapter II were not amended to include the Government's contributions to the Plan. This situation clearly undermines the intent of subchapter II by permitting an employee convicted of espionage to retain the Government's contributions to the Plan. This provision would allow for the forfeiture of the Government's contribution to the Plan and attributable earnings on that contribution in situations where an individual was convicted of any of the various national security offenses cited in subchapter II.

Section 305 amends section 8312 of title 5, United States Code, to restore spousal pension benefits to the spouse of a federal employee whose annuity or retired pay has been forfeited under section 9312 or 8313, as amended, if the spouse cooperated in the criminal investigation and prosecution of the employee. Enactment of this legislation will help to protect the national security interests of the United States by encouraging the spouse of a federal employee who knows or suspects that his or her consort is engaged in espionage activities to inform the Government and to cooperate in a subsequent criminal investigation and prosecution. Current law actually discourages a witting spouse from cooperating with the Government, since the person's spousal pension benefits will be forfeited upon the conviction of his or her consort, even if the spouse has cooperated with the Government.

Section 306 restores the authority of the Office of Personnel Management (OPM) to extend ''de-Hatching'' to employees of the agencies listed in 5 U.S.C. § 7323(b)(2)(B)(i).

Previously, under 5 U.S.C. § 7323, OPM had the authority to designate certain municipalities and other political subdivisions in which federal employees in both competitive and excepted services could actively participate in local partisan elections. (Such designation of municipalities and political subdivisions by OPM is com-

monly referred to as "de-Hatching".) However, when this authority was amended by Pub. L. 103–94 and recodified in 5 U.S.C. § 7325, the authority was granted only "without regard to the prohibitions in paragraphs (2) and (3) of section 7323(a)". The prohibitions in section 7323(a) apply to the federal employees, both competitive and excepted service. However, employees of NSA, CIA, DIA, and the other agencies listed in 5 U.S.C. § 7323(b)(2)(B)(i) are subject to additional prohibitions under section 7323(b)(2)(A) which section 7325 does not permit OPM to disregard. Thus, OPM cannot extend de-Hatching to employees of the listed agencies and the implementing interim regulations issued by OPM (59 Fed. Reg. 5313 (1994) to be codified at 5 C.F.R. Part 733) reflect this restriction.

This provision would amend the "de—Hatching" provision (5 U.S.C. § 7325) to include the excepted services in the category of federal employees that OPM may permit to take an active part in local (not Federal) political campaigns.

Section 307 requires the DCI to report to the intelligence oversight committees within three months detailed personnel procedures to be implemented across the intelligence community to provide for mandatory retirement at expiration of time in class and termination based on relative performance similar to comparable provisions in sections 607 and 608 of the Foreign Service Act of 1980 (Title 22 U.S.C. 4007 and 4008).

In the wake of the Ames case, the Committee urged the Intelligence Community to adopt policies to weed out poor performers and develop headroom for young people coming up. The Director of Central Intelligence and Secretary of Defense were directed in the FY1995 Intelligence Authorization Act to provide a report by December 1, 1994, on the advisability of providing for mandatory retirement at expiration of time in class. It was never received. The Committee has reviewed the issue and determined that such a policy, combined with a "relative performance" policy, is advisable and is now directing the DCI to move forward and develop procedures for implementation.

Section 308 authorizes assistance to a foreign country's counterterrorism efforts, notwithstanding any other law, if it is provided for the purpose of protecting U.S. persons or property or furthering the apprehension of those responsible for any such acts of terrorism.

Title IV—Central Intelligence Agency

Section 401 amends section 2(f) of the CIA Voluntary Separation Pay Act, 50 U.S.C. § 403–4(f), to extend the Agency's authority to offer separation incentives until September 30, 1999. Without this amendment, the Agency's authority to offer such incentives will expire on September 30, 1997. In light of the Committee's concern that this authority may have been used in the past in lieu of more rigorous personnel policies, this authority is extended with the understanding that the Intelligence Community will be implementing such policies, as directed in Section 307 of this Act, and that this authority can be used to ease the transition to the more rigorous, performance-based criteria and policy.

Section 402 authorizes the Director to establish, as a demonstration project, a volunteer service program for fiscal years 1996

through 2001 whereby no more than 50 retirees can volunteer their services to the CIA to assist the Agency in its systematic and or mandatory review for declassification for downgrading of classified information under certain Executive Orders and P.L. 102–256. The provision limits expenditures to no more than $100,000.

This section authorizes the Agency to pay costs incidental to the use of the services of volunteers, such as training, equipment, lodging, subsistence, equipment, and supplies. It also ensures that volunteers are covered by workers compensation (the Federal Employees Compensation Act). Without this legislation, the CIA would be unable to pay costs incident to the use of gratuitous services provided by volunteers, such as training and equipment. The program established under this section will be temporary and limited.

Section 403(a) modifies the CIA Inspector General statute to require the IG to report of violations of Federal law by any person, as opposed to violations by officers or employees of the CIA. It also allows the reports to go directly from OIG to DoJ, rather than through the DCI, although the DCI must receive a copy of the report. This is consistent with the Inspector General of 1978 and enhances the independence of the IG.

Section 403(b) clarifies the CIA IG statute to ensure that the identity of an employee who has been granted confidentiality can be disclosed to the DoJ official responsible for determining whether a prosecution should be undertaken. Current law already provides for this but this provision would clarify and simplify the process.

Section 404 requires an annual report on all liaison relationships, to include the names of governments and entities, the purpose of each relationship, the resources dedicated, a description of the intelligence provided and received, and any significant changes anticipated. This responds to the longstanding concerns of the Committee, most recently highlighted by the events in Guatemala, about liaison relationships and the lack of reporting to Congress on potential "flaps."

Title V—Department of Defense

Section 501 amends section 1605(a) of title 10, United States Code, and section 431 of title 37, United States Code, to provide to civilian personnel and members of the armed forces of the Defense HUMINT Service outside the United States benefits and allowances comparable to those provided by the Secretary of State to officers and employees of the Foreign Service.

The Secretary of Defense has the authority to provide to civilian personnel and members of the armed forces assigned to the Defense Attaché Offices and the Defense Intelligence Agency Liaison Offices outside the United States benefits and allowances comparable to those provided by the Secretary of State to officers and employees of the Foreign Service. This authority was attained in 1983 (P.L. 98–215).

With the consolidation of Department of Defense human intelligence into the Defense HUMINT Service, the Defense Intelligence Agency will be responsible for a significant number of employees overseas. Although a number of these employees may be assigned to Defense Attaché Offices or Defense Intelligence Agency Liaison Offices outside the United States, there will be a significant num-

ber of employees who will be assigned to other overseas locations. Since the Agency's authority to provide benefits and allowances to overseas employees is limited to the Defense Attaché Office and the Defense Intelligence Agency Liaison Offices, inequities will once again occur. This amendment would ensure comparable benefits for civilian and military personnel assigned to the Defense HUMINT Service overseas.

The benefits authorized in this provision are intended to supplement compensation packages that were designed for personnel who would be stationed on a military base, with all the benefits a base provides. Thus the authority to offer these additional benefits should only be exercised when a DIA officer is not stationed near a military base.

Section 502 extends for five additional years the sunset provision for the exemption for certain DoD intelligence activities from administrative statutes applicable to federal agencies which are inconsistent with establishing and maintaining bona fide private commercial activities. Compliance with such statutes is excused where compliance would compromise the commercial activity concerned as an agency or instrumentality of the United States Government.

This exemption was enacted in 1991, when the Secretary of Defense was provided a statutory framework clarifying his authority to engage in intelligence commercial activities. At that time, the Committee noted that "such activities could, if not adequately coordinated and carefully regulated, lead to abuses and improprieties, or could lead to actions which might provide politically embarrassing to the United States." To ensure prudent exercise of the authority, the subchapter authorizing the activity imposed approval and coordination requirements as well as congressional oversight and reporting requirements. To further guard against abuse of the new authority, and to ensure adequate congressional review, the provision contained a clause which stated that no commercial activity may be initiated pursuant to this subchapter after December 31, 1995. The authority has never been used, however, due largely to significant budget cuts affected in December 1992. Recently, however, DoD has enhanced its HUMINT efforts and is working closely with CIA to develop the skills, plans, and infrastructure necessary to effectively utilize this authority. Thus, the Committee is extending the sunset provision to December 31, 2000.

Section 503 would authorize the Secretary of Defense to send civilian employees in the Military Departments' Civilian Intelligence Personnel Management System (CIPMS) to be students at accredited professional, technical, and other institutions of higher learning for training at the undergraduate level. This authority would be similar to that already granted to the Defense Intelligence Agency (DIA) in 10 U.S.C. section 1608 (Public Law 101–93, title V, section 507(a)(1), Nov 30, 1989, 103 Stat. 1710) and the National Security Agency (NSA) in 50 U.S.C. 402 note. The purpose of the new section is to establish an undergraduate training program, including training which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, particularly minority, to facilitate the recruitment of individuals, particularly minority, women, and handicapped high school students with a demonstrated capa-

bility to develop skills critical to the intelligence missions of the Military Departments in areas such as computer science, engineering, foreign language, and area studies. In exchange for this financial assistance from the respective CIPMS organization, the student participant would undertake an obligation to work for a period of one-and-one half years for each year or partial year of schooling.

This mission of the intelligence entities of the Unites States Government demand employees of extraordinary aptitude and strong undergraduate training. Those same entities must compete with a private sector—capable of offering more favorable compensation arrangements—that in most instances has been able to outbid the USG in terms of attracting qualified minority candidates. Statistics in recent years indicate that the success of the Military Departments' CIPMS to attract minority group candidates has been marginal.

This proposal is designed to enhance the capabilities of the intelligence elements of the Military Departments to (i) ensure equal employment opportunity with their civilian ranks through affirmative action; (ii) develop and retain personnel trained in skills essential to the effective performance of their intelligence mission; and, (iii) compete on equal footing with other Intelligence Community entities for personnel with critical skills.

Title VI—Federal Bureau of Investigation

Section 601 would amend the Fair Credit Reporting Act (FCRA) (15 U.S.C. 1681f) to grant the Federal Bureau of Investigation (FBI) access to certain information in consumer credit records in counterintelligence investigations.

A similar provision was included in the Intelligence Authorization Act for FY 1995 as reported by this Committee. The provision was dropped in conference at the request of the House Committee on Banking, Finance, and Urban Affairs upon assurances that that Committee would pursue similar legislation. The U.S. House of Representatives ultimately adopted H.R. 5178 which contained a provision along the lines of that which is included as section 601 of this Act. The bill was never acted upon by the Senate.

This provision would provide a limited expansion of the FBI's authority in counterintelligence investigations (including terrorism investigations), to obtain a consumer credit report with a court order. In addition, it would allow the FBI to use a "National Security Letter," i.e. a written certification by the FBI Director or the Director's designee, to obtain from a consumer credit agency the names and addresses of all financial institutions at which a consumer maintains an account, as well as certain identifying information.

Under current law, when appropriate legal standards are met, FBI is able to obtain mandatory access to credit records by means of a court order or grand jury subpoena (see the FCRA, 15 U.S.C. 1681b(1)), but such an option is available to the FBI only after a counterintelligence investigation has been formally converted to a criminal investigation or proceeding. Many counterintelligence investigations never reach the criminal stage but proceed for intelligence purposes or are handled in diplomatic channels.

In addition FBI presently has authority to use the National Security Letter mechanism to obtain two types of records: financial in-

stitution records (under the Right to Financial Privacy Act, 12 U.S.C. 3414(a)(5)) and telephone subscriber and toll billing information (under the Electronic Communications Privacy Act, 18 U.S.C. 2709). Expansion of this extraordinary authority is not taken lightly by the Committee, but the Committee has concluded that on this instance the need is genuine, the threshold for use is sufficiently rigorous, and, given the safeguards built in to the legislation, the threat to privacy is minimized.

Under a provision of the Right to Financial Privacy Act (RFPA) (12 U.S.C. 3414(a)(5)), the FBI is entitled to obtain financial records from financial institutions, such as banks and credit card companies, by means of a National Security Letter when the Director or the Director's designee certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power, as those terms are defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

The FBI considers such access to financial records crucial to trace the activities of suspected spies or terrorists. The need to follow financial dealings in counterintelligence investigations has grown as foreign intelligence services increasingly operate under non-official cover, i.e., pose as business entities or executives, and as foreign intelligence service activity has focused increasingly on U.S. economic information.

FBI's right of access under the Right to Financial Privacy Act cannot be effectively used, however, until the FBI discovers which financial institutions are being utilized by the subject of a counterintelligence investigation. Consumer reports maintained by credit bureaus are a ready source of such information, but, although such reports are readily available to the private sector, they are not available to FBI counterintelligence investigators. Under section 608 of the Fair Credit Reporting Act, without a court order, FBI counterintelligence officials, like other government agencies, are entitled to obtain only limited information from credit reporting agencies—the name, address, former addresses, places of employment, and former places of employment, of a person—and this information can be obtained only with the consent of the credit bureau.

FBI has made a specific showing to the Committee that the effort to identify financial institutions in order to make use of FBI authority under the Right to Financial Privacy Act can not only be time-consuming and resource-intensive, but can also require the use of investigative techniques—such as physical and electronic surveillance, review of mail covers, and canvassing of all banks in an area—that would appear to be more intrusive than the review of credit reports. FBI has offered a number of specific examples in which lengthy, intensive and intrusive surveillance activity was required to identify financial institutions doing business with a suspected spy or terrorist.

Section 601 of the instant legislation would amend FCRA by adding a new section 624, consisting of 13 paragraphs.

Paragraph 624(a) of the amended FCRA requires a consumer reporting agency to furnish to the FBI the names and addresses of all financial institutions at which a consumer maintains or has maintained an account, to the extent the agency has that information, when presented with a written request signed by the FBI Director or the Director's designee, which certifies compliance with the subsection. The FBI Director or the Director's designees may make such certification only if the Director or the Director's designee has determined in writing that such records are necessary for the conduct of an authorized foreign counterintelligence investigation and that there are specific and articulable facts giving reason to believe that the person whose consumer report is sought is a foreign power, a non-U.S. official of a foreign power, or an agent of a foreign power (as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)) and is engaged in terrorism or other criminal clandestine intelligence activities.

The requirement that there be specific and articulable facts giving reasons to believe that a U.S. person is an agent of a foreign power before FBI can obtain access to a consumer report is consistent with the standards in the Right to Financial Privacy Act, 12 U.S.C. 3414(a)(5)(A), and the Electronic Communications Privacy Act, 18 U.S.C. 2709(b).

However, in contrast to those statutes, the Committee has drafted the FCRA certification requirement to provide that the FBI demand submitted to the consumer reporting agency make reference to the statutory provision without providing the agency with a written certification that the subject of the consumer report is believed to be an agent of a foreign power. FBI would still be required to record in writing its determination regarding the subject, and the credit reporting agency would be able to draw the necessary conclusion, but the Committee believes that its approach would reduce the risk of harm from the certification process itself to the person under investigation. A similar approach is taken in paragraph 624(b), described below.

Section 605 of the FCRA, 15 U.S.C. 1681c, defines "consumer report" in a manner that prohibits the dissemination by credit reporting agencies of certain older information except in limited circumstances. None of these excepted circumstances would apply to FBI access under proposed FCRA paragraph 624(a) (or proposed FCRA paragraph 624(b)). Accordingly, FBI access would be limited to "consumer reports" as defined in 605.

The term "an authorized foreign counterintelligence investigation" includes those FBI investigations conducted for the purpose of countering international terrorist activities as well as those FBI investigations conducted for the purpose of countering the intelligence activities of foreign powers. Both types of investigations are conducted under the auspices of the FBI's Intelligence Division, headed by an FBI Assistant Director.

As is the case with the FBI's existing National Security Letter authority under the Right to Financial Privacy Act (see Senate Report 99–307, May 21, 1986, p. 16; House Report 99–952, October 1, 1986, p. 23), the Committee expects that, if the Director of the FBI delegates this function under paragraph 624(a), as well as

under paragraph 624(b) discussed below, the Director will delegate it no further down than the level of FBI Deputy Assistant Director. (There are presently two Deputy Assistant Directors for the National Security Division, one with primary responsibility for counterintelligence investigations and the other with primary responsibility for international terrorism investigations.)

Paragraph 624(b) would give the FBI mandatory access to the consumer identifying information—name, address, former addresses, places of employment, or former places of employment—that it may obtain under current section 608 only with the consent of the credit reporting agency. A consumer reporting agency would be required to provide access to such information when presented with a written request signed by the FBI Director or the Director's designee, which certifies compliance with the subsection. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing that such information is necessary to the conduct of an authorized foreign counterintelligence investigation and that there is information giving reason to believe that the person about whom the information is sought has been, or is about to be, in contact with a foreign power or an agent of a foreign power, as defined in Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

FBI officials have indicated that they seek mandatory access to this identifying information in order to determine if a person who has been in contact with a foreign power or agent is a government or industry employee who might have access to sensitive information of interest to a foreign intelligence service. Accordingly, the Committee has drafted this provision to require that such limited information can be provided only in circumstances where the consumer has been or is about to be in contact with the foreign power or agent.

The Committee has also drafted paragraphs 624(a) and 624(b) in a manner intended to make clear the Committee's intent that the FBI may use this authority to obtain this information only as regards those persons who either are a foreign power or agent thereof or have been or will be in contact with a foreign power or agent. Although the consumer records of another person, such as a relative or friend of an agent of a foreign power, or identifying information respecting a relative or friend of a person in contact with an agent of a foreign power, may be of interest to FBI counterintelligence investigators, they are not subject to access under paragraphs 624(a) and 624(b).

It is not the Committee's intent to require any credit reporting agency to gather credit or identifying information on a period for the purpose of fulfilling an FBI request under paragraphs 624(a) and 624(b). A credit reporting agency's obligation under these provisions is to provide information responsive to the FBI's request that the credit reporting agency already has in its possession.

Paragraph 624(c) provides that, if requested in writing by the FBI, a court may issue an order ex parte directing a consumer reporting agency to furnish a consumer report to the FBI upon a showing in camera that the report is necessary for the conduct of an authorization foreign counterintelligence investigation and that

there are specific and articulable facts giving reason to believe the consumer is an agent of a foreign power and is engaged in international terrorism or clandestine intelligence activities that may involve a crime.

Paragraph 624(d) provides that no consumer reporting agency or officer, employee, or agent of such institution shall disclose to any person, other than those officers, employees or agents of such institution necessary to fulfill the requirement to disclose information to the FBI under subsection 624, that the FBI has sought or obtained a consumer report or financial institution, or identifying information respecting any consumer under paragraphs 624, nor shall such agency, officer, employee, or agent include in any consumer report any information that would indicate that the FBI has sought or obtained such information. The prohibition against including such information in a consumer report is intended to clarify the obligations of the consumer reporting agencies. It is not intended to preclude employees of consumer reporting agencies from complying with company regulations or policies concerning the reporting of information, nor to preclude their complying with a subpoena for such information issued pursuant to appropriate legal authority.

Paragraph 624(d) departs from the parallel provision of the RFPA by clarifying that disclosure is permitted within the contacted institution to the extent necessary to fulfill the FBI request. The Committee has not concluded, or otherwise taken a position whether, that disclosure for such purpose would be forbidden by the RFPA; indeed, practicalities would dictate that the provision not be interpreted to exclude such disclosure. However, the Committee believes that clarification of the obligation for purposes of the FCRA is desirable.

Paragraph 624(e) requires the FBI, subject to the availability of appropriations, to pay to the consumer reporting agency assembling or providing credit records a fee in accordance with FCRA procedures for reimbursement for costs reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced under section 624. The FBI informs the Committee that such reports are commercially available for approximately $7 to $25 and that FBI could expect to pay fees in approximately that range. FBI officials have advised the Committee that the costs of such reports would be easily recouped from the savings afforded by the reduced need for other investigative techniques aimed at obtaining the same information.

Paragraph 624(f) prohibits the FBI from disseminating information obtained pursuant to section 624 outside the FBI, except as may be necessary for the approval or conduct of a foreign counterintelligence investigation, or, where the information concerns military service personnel subject to the Uniform Code of Military Justice, to appropriate investigation authorities in the military department concerned as may be necessary for the conduct of a joint foreign counter-intelligence investigation with the FBI. Since the military departments have concurrent jurisdiction to investigate and prosecute military personnel subject to the Uniform Code of Military Justice, paragraph 624(g) permits the FBI to disseminate

consumer credit reports it obtains pursuant to this section to appropriate military investigative authorities where a foreign counterintelligence investigation involves a military service person and is being conducted jointly with the FBI.

Paragraph 624(g) provides that nothing in section 624 shall be construed to prohibit information from being furnished by the FBI pursuant to a subpoena or court order, or in connection with a judicial or administrative proceeding to enforce the provisions of the FCRA. The paragraph further provides that nothing in section 624 shall be construed to authorize or permit the withholding of information from the Congress.

Paragraph 634(h) provides that on a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence and the Committee on Banking, Finance, and Urban Affairs of the U.S. House of Representatives, and the Select Committee on Intelligence and the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate concerning all requests made pursuant to section 624.

Seminannual reports are required to be submitted to the intelligence committees on (1) use of FBI's mandatory access provision of the RFPA by section 3414(a)(5)(C) of title 15, United States Code; and (2) use of the FBI's counterintelligence authority, under the Electronic Privacy Communications Act of 1986, to access telephone subscriber and toll billing information by section 2709(e) of title 18, United States Code. The Committee expects the reports required by FCRA paragraph 624(h) to match the level of detail included in these reports, i.e., a breakdown by quarter, by number of requests, by number of persons or organizations subject to requests, and by U.S. persons and organizations and non-U.S. persons and organizations.

Paragraphs 624(i) through 624(m) parallel the enforcement provisions of the Right to Financial Privacy Act, 12 U.S.C. 3417 and 3418.

Paragraph 624(i) establishes civil penalties for access or disclosure by an agency or department of the United States in violation of section 624. Damages, costs and attorney fees would be awarded to the person to whom the consumer reports related in the event of a violation.

Paragraph 624(j) provides that whenever a court determines that any agency or department of the United States has violated any provision of section 624 and that the circumstances surrounding the violation raise questions of whether an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was responsible for the violation.

Paragraph 624(k) provides that any credit reporting institution or agent or employee thereof making a disclosure of credit records pursuant to section 624 in good-faith reliance upon a certificate by the FBI pursuant to the provisions of section 624 shall not be liable to any person for such disclosure under title 15, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

Paragraph 624(l) provides that the remedies and sanctions set forth in section 624 shall be the only judicial remedies and sanctions for violations of the section.

Paragraph 624(m) provides that in addition to any other remedy contained in section 624, injunctive relief shall be available to require that the procedures of the section are compiled with and that in the event of any successful action, costs together with reasonable attorney's fees, as determined by the court, may be recovered.

Title VII—Technical correction

Section 701 amends section 102(c)(3)(C) of the National Security Act by striking out the parenthetical reference "including military pay" and inserting "active duty" before "commissioned." While we do not believe that this section applies to retired military officers, it is important to remove any ambiguity by making these changes. These technical corrections clarify that a retired military officer appointed as Director of Deputy Director of Central Intelligence can receive compensation at the appropriate level of the Executive Schedule under 5 U.S.C. § 5313 (Director) or 5 U.S.C. § 5314 (Deputy Director). This clearly was the intent of the drafters of this provision. The Senate Select Committee on Intelligence added section 102(c)(3)(C) to the FY 1993 Intelligence Authorization Act to ensure that an active duty military officer appointed as Director or Deputy Director only receives his or her military pay, not to restrict the compensation of a retired military officer appointed to one of those positions.

Section 702 amends the CIA Information Act of 1984 to reflect the recent reorganization of the CIA Office of Security into the Office of Personnel Security and the Office of Security Operations. The amendment will ensure that the Office of Personnel Security, where the records intended to be subject to the Act are kept, will continue to receive the benefit of the Act's exception from search and review under the Freedom of Information Act. It is the Committee's understanding that the types of records that will be kept in the Office of Personnel Security are identical to the types of records formerly kept in the CIA Office of Security to which the Act has applied.

COMMITTEE ACTION

On May 24, 1995, the Select Committee on Intelligence approved the bill by a unanimous vote, and ordered that it be favorably reported.

ESTIMATE OF COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee attempted to estimate the costs which would be incurred in carrying out the provisions of this bill in fiscal year 1996 and in each of the five years thereafter if these amounts are appropriated. For fiscal year 1996, the estimated costs incurred in carrying out the provisions of this bill are set forth in the classified annex to this bill. Estimates of the costs incurred in carrying out this bill in the five fiscal years thereafter are not available from the Executive branch and, therefore, the Committee deems it impractical, pursuant to paragraph 11(a)(3) of rule XXVI

of the Standing Rules of the Senate, to include such estimates in this report.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to existing law, the Committee requested and received the following cost estimate from the Congressional Budget Office regarding this legislation:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 12, 1995.

Hon. ARLEN SPECTER,
Chairman, Select Committee on Intelligence,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for the Intelligence Authorization Act for Fiscal Year 1996, as ordered reported by the Senate Select Committee on Intelligence on May 24, 1995.

The bill would affect direct spending and thus would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, *Director*).

Enclosure.

1. Bill number: Unassigned.

2. Bill title: Intelligence Authorization Act for Fiscal Year 1996.

3. Bill Status: As ordered reported by the Senate Select Committee on Intelligence on May 24, 1995.

4. Bill purpose: The bill would authorize appropriations for fiscal year 1996 for intelligence activities of the United States government, the Community Management Staff of the Director of Central Intelligence, and the Central Intelligence Agency Retirement and Disability System

5. Estimate cost to the Federal Government of Titles I (except sections 101–103), II, III (except section 301), IV, V, and VI: CBO was unable to obtain the necessary information to estimate the costs for Title I (except section 104) and section 301 of Title III of this bill because they are classified at a level above clearances now held by CBO employees. The estimated costs in the table below, therefore, reflect only the costs of section 104 and Titles II, III (except section 301), IV, V, and VI.

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Direct spending:						
Estimated budget authority	0	(1)	(1)	2	3	1
Estimated outlays	0	(1)	(1)	2	3	1
Spending subject to appropriations action:						
Spending under current law:						
Budget authority[2]	291	0	0	0	0	0

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Estimated outlays	291	38	22	9	0	0
Proposed changes:						
Estimated authorization level [3]	0	312	([1])	5	6	1
Estimated outlays	0	275	28	12	8	1
Spending under the Authorization Act for Fiscal Year 1996:						
Estimated authorization level [2 3]	291	312	([1])	5	6	1
Estimated outlays	291	313	50	21	8	1

[1] Less than $500,000.
[2] The 1995 figure is the amount already appropriated.
[3] Because parts of this bill are highly classified, CBO is unable to provide a full accounting of the bill's costs over the 1996–2000 period and a comparison with the 1995 level.

6. Basis of estimate: For purposes of this estimate, CBO assumed that the Intelligence Authorization Act of Fiscal Year 1996 will be enacted by October 1, 1995, and that the full amounts authorized will be appropriated for fiscal year 1996. Outlays are estimated according to historical spending patterns for intelligence programs.

Direct spending

CIA Separation Incentive. Section 401 would allow the Central Intelligence Agency (CIA) to offer separation incentive payments to employees from the end of fiscal year 1997 to the end of fiscal year 1999. Additional retirement costs would occur in the near term because employees who retire under this program would receive their annuities earlier than they would otherwise. The cost of these annuities would constitute direct spending. CBO estimates no costs to occur in 1996 and 1997 as a result of section 401. However, direct spending costs are estimated to be $2 million in 1998, $3 million in 1999, and $1 million in 2000.

Based on projections from the CIA, CBO estimates that 550 employees would be offered an incentive payment in 1998 and 700 in 1999. The CIA expects that one quarter of those offered an incentive payment would take the incentive and retire. The estimate assumes that about 60 percent of the retirees would have retired anyway, without the incentive. The estimate assumes that the remaining 40 percent who accept the incentive would retire one or two years earlier than they would have otherwise.

Thrift Savings Plan (TSP) Forfeiture. Section 304 would allow forfeiture of the U.S. government contribution to the TSP under the Federal Employee Retirement System, along with interest, if an employee is convicted of national security offenses. According to the CIA, saving from this provision would not exceed $35,000 annually.

Spousal Pension Benefits. Section 305 would allow restoration of spousal pension benefits to those spouses who cooperate in criminal investigations and prosecutions for national security offenses. According to the CIA, costs from this provision would not exceed $35,000 annually.

Authorizations of appropriations

Section 104 would authorize appropriations of $98.3 million for 1996 for the Intelligence Community Management Account of the Director of Central Intelligence (DCI). Similarly, section 201 specifies an authorization of appropriations for a contribution to the

Central Intelligence Agency Retirement and Disability Fund of $213.9 million.

In addition to the added retirement costs, section 401 (discussed above under direct spending) would increase discretionary spending for inventive costs. The cash incentives would cost $4 million in 1998 and $5 million in 1999. CBO assumes that the savings in salary and benefits from these reductions would be incurred under current law as part of the anticipated reduction in the CIA workforce. Thus, these savings would not be a result of this bill and would not offset the cost of incentive payments in this estimate.

Section 501 would extend comparable benefits and allowances to civilian and military personnel assigned to defense intelligence functions overseas. According to the Defense Intelligence Agency, this provision would increase personnel costs by approximately $200,000 annually.

Section 503 would authorize the Secretary of Defense to establish an undergraduate training program for recruiting individuals with skills that are critical to the intelligence missions of the Military Departments. According to the Defense Intelligence Agency, this provision could cost approximately $600,000 annually by the year 2000 depending on how the different branches of the armed services subscribe to the program.

Section 601 would extend access to consumer credit records to the Federal Bureau of Investigation provided that such information is to be used for an authorized foreign counterintelligence investigation. The costs to reimburse reporting agencies for processing costs would be insignificant.

7. Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that the Intelligence Authorization Act for Fiscal Year 1996 would have the following pay-as-you-go impact:

[By fiscal years, in millions of dollars]

	1995	1996	1997	1998
Change in outlays	0	0	0	2
Change in receipts	NA	NA	NA	NA

8. Estimated cost to State and local governments: None.

9. Estimate comparison: None.

10. Previous CBO estimate: None.

11. Estimate prepared by: Wayne Boyington and Elizabeth Chambers.

12. Estimate approved by: Robert R. Singhine, for Paul N. Van de Water, Assistant Director for Budget Analysis.

EVALUATION OF REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee finds no regulatory impact will be incurred by implementing the provisions of this legislation.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of section 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

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